

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

2 Frederick A. Lorig (Bar No. 057645)

3 fredlorig@quinnemanuel.com

4 Kevin Y. Teruya (Bar No. 235916)

5 kevinteruya@quinnemanuel.com

6 Adam B. Wolfson (Bar No. 262125)

7 adamwolfson@quinnemanuel.com

8 865 South Figueroa Street, 10<sup>th</sup> Floor

9 Los Angeles, California 90017-2543

10 Telephone: (213) 443-3000

11 Facsimile: (213) 443-3100

12 Attorneys for Complete  
13 Entertainment Resources LLC

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 Complete Entertainment Resources  
17 LLC d/b/a Songkick,

18 Plaintiff,

19 v.

20 Live Nation Entertainment, Inc.;  
21 Ticketmaster LLC,

22 Defendants.

23 Ticketmaster LLC,

24 Counter Claimant,

25 v.

26 Complete Entertainment Resources  
27 LLC d/b/a Songkick,

28 Counter Defendant.

CASE NO. 15-cv-9814 DSF (AGRx)

**SONGKICK'S OPPOSITION TO  
DEFENDANTS' EX PARTE  
APPLICATION FOR LEAVE TO  
FILE AN OVERSIZE BRIEF IN  
SUPPORT OF DEFENDANTS'  
PARTIAL MOTION FOR  
SUMMARY JUDGMENT ON  
PLAINTIFF'S CLAIMS**

Assigned to The Hon. Dale S. Fischer

Date: April 27, 2017

Motion Hearing Cut-Off: Aug 7, 2017  
Pre-Trial Conference: October 16, 2017  
Trial Date: November 14, 2017

1 Plaintiff Complete Entertainment Resources LLC d/b/a Songkick  
 2 (“Songkick”) respectfully submits this opposition to Defendants’ *ex parte*  
 3 application for an order granting leave to file an oversize brief (Dkt. 199).<sup>1</sup>

4 The critical point Defendants elide in their application is that they are not  
 5 seeking 50 pages for summary judgment motions; they are seeking 75. In meet and  
 6 confers on this issue, Defendants’ counsel made clear that *each* Defendant, Live  
 7 Nation Entertainment, Inc. *and* Ticketmaster LLC, intends to file a separate  
 8 summary judgment motion. This is consistent with the Court’s standing order, Dkt.  
 9 ¶ 7(c), and Songkick cannot object to such parallel briefs. In the ordinary course,  
 10 if each Defendant files their own summary judgment motion and they coordinate the  
 11 arguments between themselves (as they will presumably do, given they are  
 12 represented by the same counsel and are subject to the same causes of action), that  
 13 means the Local Rules collectively provide Defendants with 50 pages to make their  
 14 summary judgment arguments. Songkick informed Defendants it would not object  
 15 to a single, omnibus 50-page brief, because that is more efficient and easier on the  
 16 Court. But Songkick strenuously objects to both a 50-page motion and a separate  
 17 25-page motion, as Defendants now request.

18 In discussing this issue, Songkick’s counsel inquired why 50 total pages was  
 19 not enough, particularly because summary judgment is appropriate only for those  
 20 disputes where there are no genuine issues of material fact. In response,  
 21 Defendants’ counsel offered no specifics except for the same generalities in their  
 22 application, which, based on Defendants’ own case law, clearly do not support  
 23  
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25 <sup>1</sup> The parties stipulated that Songkick may submit its opposition on May 3,  
 26 2017. *See* Dkt. 201. However, in the interest of proceeding expeditiously with this  
 27 issue, and because Songkick believes it can adequately address Defendants’  
 28 arguments now, it is submitting this opposition today despite its previous extension  
 agreement.

1 providing the expansion they seek. Songkick therefore opposed the expansion  
2 request then, and reiterates that opposition now.

3 To this point, *FDIC v. Van Dellen*, 10-cv-04915-DSF, Dkt. 218 (C.D. Cal.  
4 filed Aug. 29, 2012) (Fischer, J.), is an excellent example of how far Defendants  
5 overstep with their 75-page limit request. In *Van Dellen*, this Court permitted the  
6 defendant to file a **34**-page response to the FTC's summary judgment motion, which  
7 was based on a 309-page complaint with 68 different counts. *See id.*; *see also id.*,  
8 Dkt. 214 at 1-2. The FTC's motion sought judgment on 23 of those 68 counts, and  
9 focused on different loans for each count. *Id.*, Dkt. 214 at 1-2. The defendant  
10 needed to provide individualized responses and argument to each of the 23 counts,  
11 necessitating the overlong brief. *Id.*

12 Songkick's complaint and the number of claims it asserts are a fraction of  
13 what the FTC asserted in *Van Dellen*. Furthermore, unlike the party seeking an  
14 overlong brief in that case, Defendants already have 50 pages to make their  
15 arguments. If a party was able to get by on 34 pages for vastly broader claims with  
16 far more factual complexity, it is difficult to see why Defendants here are unable to  
17 do the same with an even higher default page limit.

18 Defendants' next example, *FTC v. Tatto, Inc.*, 13-cv-08912-DSF, Dkt. 8  
19 (C.D. Cal. filed Dec. 5, 2013) (Fischer, J.), similarly establishes how far Defendants  
20 overreach. In *Tatto*, the FTC (*i.e.*, the plaintiff) sought permission to include **5** extra  
21 pages in a TRO application, due to the proof it needed to adduce for its affirmative  
22 claims and "the complexity of the Defendants' corporate structure and operations  
23 and the variety of appropriate relief." *Id.*, Dkt. 4 at 2. That means the FTC sought  
24 and obtained 30 pages for a brief to prove its case, which is 20 pages less than what  
25 Defendants already have for their efforts to disprove Songkick's claims. Defendants  
26 offer no explanation why *Tatto* shows they need yet another 25 pages.

27 Finally, Defendants substantially misrepresent *Zazzali v. Swenson*, 2013 WL  
28 6181821 (D. Idaho Aug. 6, 2013), a case that again supports Songkick's opposition

1 to 75 pages rather than Defendants’ application for that relief. In *Zazzali*, the  
2 plaintiff (a bankruptcy trustee) sought a page extension, and then only for 3 extra  
3 pages to a 10-page reply brief. *Zazzali v. Swenson*, 1:12-cv-00224-EJL-MHW, Dkt.  
4 331 (D. Idaho May 24, 2013). The plaintiff justified that request “[d]ue to the  
5 number of remaining defendants and the procedural and legal complexity of the  
6 claims against them.” *Id.* at 1. The page extension request was not, as Defendants  
7 incorrectly assert (at 2), based on the “complexity of assessing an ‘excessive’  
8 damages claim.” Indeed, the party seeking the 3-page extension *was* the party  
9 seeking damages. *See Zazzali*, 2013 WL 61821, at \*1 (“By this motion, the Trustee  
10 seeks to hold [the defendants] liable for some \$196,689.254 of debt...”).

11 The point of this discussion is not to rely overmuch on previous cases.  
12 Instead, it is to point out that Defendants offer no support or good cause for the  
13 proposition that 50 pages is insufficient for summary judgment.

14 As an initial matter, Defendants seek to inflate the number and complexity of  
15 Songkick’s antitrust theories, but all share a common nucleus of core facts,  
16 including the two relevant markets at issue (respectively, artist presale ticketing  
17 services and venue ticketing services); Ticketmaster’s power within those markets;  
18 that Defendants worked together in furtherance of the anticompetitive scheme,  
19 including (among other things) anticompetitively drafting Ticketmaster’s fan club  
20 policy to restrain competition and then enforcing that policy in a way meant solely  
21 to quash competition; the ensuing harm to competition that actually occurred from  
22 Defendants’ activities; and the harm to Songkick from those activities. Similarly,  
23 Songkick’s trade secret misappropriation and CFAA claims also focus on the same  
24 core set of facts, which involve Defendants’ unauthorized access to and use of  
25 Songkick’s confidential and proprietary information. This is not a case where each  
26 claim is separate and distinct from the others, or addresses segregated actions not  
27 applicable to the other claims. All is interrelated here.

28 Next, an extra 25 pages of briefing, for 75 total, will not change that there are

1 fundamental and genuine disputes regarding the material facts. Contrary to the  
 2 assertions in Defendants' application, *see generally* Dkt. 199, discovery in this case  
 3 has shown that Songkick's allegations are proven by the evidence produced since  
 4 the last hearing before the Court. Among other things, discovery has shown that:  
 5 Defendants internally defined the relevant markets in the exact same way Songkick  
 6 alleged in its Complaint; Defendants intended to use, and have used, their monopoly  
 7 power to squash competition in the artist presale ticketing services market;  
 8 Defendants were not only consciously aware of Songkick, but actively tried to  
 9 destroy it and all other artist presale companies because they viewed such  
 10 companies as an existential threat; both Ticketmaster and Live Nation's senior  
 11 executives testified that they do not believe they have to, and did not, reasonably  
 12 apply or define Ticketmaster's fan club policy; and the same witnesses testified that  
 13 the policy could be used to restrict competition by Songkick and other artist presale  
 14 ticketing service providers with Ticketmaster's own presale ticketing platform.  
 15 Moreover, as detailed in Songkick's Amended Complaint (and proven up by  
 16 additional discovery), Defendants accessed and used Songkick's proprietary and  
 17 confidential information without permission and to destroy Songkick as a  
 18 competitor. Songkick similarly has disclosed expert opinions (including from the  
 19 former chief economist of the DOJ's Antitrust Division and the FTC) establishing,  
 20 *inter alia*, that Defendants have market power in the artist presale and venue  
 21 ticketing services markets, and that their activities illegally harmed competition and  
 22 damaged Songkick. All of this is the information Songkick did not have—because  
 23 discovery had not yet occurred—when it sought a preliminary injunction last year  
 24 and was unable to demonstrate, at that time, a substantial likelihood of success. Dkt.  
 25 63, at 1, 3.<sup>2</sup>

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27       <sup>2</sup> Such rulings are of course preliminary, and therefor non-binding. *See Univ. of*  
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1 In terms of damages, Defendants imply Songkick is itself overstepping and  
 2 that this somehow justifies expanded page limits for summary judgment. However,  
 3 Defendants vastly overstate and mischaracterize the facts. The expert analysis  
 4 Songkick submitted indicates that, from 2011-present, Songkick suffered millions in  
 5 lost profits (depending on the claim at issue) and Defendants received millions in  
 6 unjust enrichment. More recently, Songkick has also suffered nine figures in lost  
 7 business value due to Defendants' ever increasing illegal conduct. The upper bound  
 8 of this type of damage is the only number Defendants cite in their brief, *see* Dkt. 199  
 9 at 1, and it is at the upper end of Songkick's damages estimates. But it is not so  
 10 difficult to believe that eliminating the value of a business with Songkick's previous  
 11 trajectory causes a tremendous amount of damage. In any event, this is an issue for  
 12 the *Daubert* motion Defendants indicate they intend to bring. *See* Dkt. 199 at 3.

13 Some cases are appropriate for summary judgment, but the majority are not.  
 14 If this case truly were as clear cut as Defendants imply, then 25 pages or, at most, 50  
 15 pages would be more than enough to establish why the Court should dismiss  
 16 Songkick's case. In truth, however, Defendants are seeking 75 pages in an attempt  
 17 to throw as many issues against the wall as possible in the hopes that one sticks.  
 18 Songkick looks forward to opposing Defendants' anticipated motions so the Court  
 19 can understand the magnitude of Defendants' anticompetitive and other illegal  
 20 conduct. But it is excessive and unnecessary to expand the summary judgment  
 21 motions in the way Defendants request. As it stated in the meet and confers,  
 22 Songkick continues to have no objection to Defendants filing a single, omnibus 50-  
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24  
 25 *Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175  
 26 (1981) (due to its preliminary and abbreviated nature, "the findings of fact and  
 27 conclusions of law made by a court granting a preliminary injunction are not  
 28 binding at trial on the merits"). Songkick is confident that the evidence it received  
 since discovery commenced shows Defendants are monopolistic bullies, and it looks  
 forward to demonstrating those facts in full at the appropriate time.

1 page summary judgment motion. But there is no good cause for a larger brief than  
2 that, and no good cause for both a 50-page *and* 25-page summary judgment motion.

3  
4 Dated: April 27, 2017

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**

5 By: /s/ Adam B. Wolfson  
6 Adam B. Wolfson

7 Attorneys for Plaintiff  
8 COMPLETE ENTERTAINMENT  
9 RESOURCES LLC  
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